

**DECISION**

**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20548

**FILE:** B-209684, B-210466 **DATE:** August 25, 1983

**MATTER OF:** Gulf & Western Healthcare, Inc.

**DIGEST:**

1. A bid is nonresponsive where Government is unable to determine from descriptive literature submitted with it for evaluation purposes that the product offered meets all of the invitation's specifications.
2. Contracting agency had a compelling reason for canceling IFB after bid opening when all bids received were nonresponsive.
3. Protest contending that a specification is unduly restrictive of competition is academic where solicitation was canceled because all bids were nonresponsive and protester's bid was determined to be nonresponsive on several bases in addition to its failure to meet the one specification protested.

Gulf & Western Healthcare, Inc. protests the cancellation of invitation for bids (IFB) No. DAKF24-82-B-0130 and the allegedly unduly restrictive specifications of IFB No. DAKF24-83-B-0027, a subsequent procurement for the same requirement. The protest with respect to IFB -0130 is denied and the protest with respect to IFB -0027 is dismissed.

**IFB -0130**

IFB -0130 was for the supply of 146 electric hospital beds (item 1); 5 bed extenders (item 2); 156 bedside cabinets (item 3); 154 overbed tables (item 4); and the unpacking and installation of these items at the Fort Polk Army Hospital (item 5). The items were not described by brand names; the solicitation specifications, however, included a list of "salient characteristics" for each item. The solicitation also contained the descriptive literature clause contained in Defense Acquisition Regulation (DAR) § 7-2003.31(a).

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Eight bids were received in response to IFB -0130 on September 9, 1982. Two of the bids were rejected as nonresponsive for failure to acknowledge a material amendment and the remainder were referred to the Health Facility Project Office to be evaluated for compliance with the invitation's specifications. The protester states that on the same day the bids were opened, it asked the contracting activity about the results of the solicitation and learned that bids were being evaluated by the Project Office. It then checked on its bid with the Project Office and was told that the bids were being analyzed.

The protester states that "on or about" October 10, it was advised by the contracting activity that its bid did not comply with the salient characteristic which requires the bed offered to maintain the patient's relationship with the headwall and night stand as the head end raises--a characteristic referred to as "retractability." Gulf then filed a protest to the agency by letter of October 19, contending that the retractability requirement restricted competition to one firm, Hill-Rom Company, Inc. By letter of October 28, the Army advised Gulf that it considered the company's protest to be untimely because it alleged an impropriety which was apparent on the face of the solicitation yet was not filed until after bids were opened. In its letter, the Army also advised Gulf that its bid was rejected as nonresponsive because the descriptive literature submitted with its bid did not indicate that the bed it offered met the following required salient characteristics, in addition to retractability: electric circuit tester, central locking system, segmented mattress, and motors of a plug-in design. Gulf then protested the rejection of its bid to our Office on October 29.

The Project Office's evaluation of the bids showed that the descriptive literature furnished with each of the bids, not just the protester's, failed to demonstrate that the hospital beds offered complied with the salient characteristics listed in the solicitation. On November 9, the Army consequently decided to cancel the solicitation and readvertise on the grounds that the solicitation did not state in sufficient detail the descriptive literature bidders were expected to furnish to show that their products clearly met the specifications. Gulf then protested the cancellation, contending that cancellation after bids were opened jeopardized its pricing structure.

For the reasons stated below, we agree with the Army's conclusion that the protester's bid was nonresponsive. Since all of the bids received in response to IFB -0130, including the protester's, were nonresponsive, we conclude that the Army had a compelling reason to cancel the solicitation and readvertise.

The protester takes exception to the Army's position that the descriptive literature submitted with its bid did not clearly indicate that its product met all of the specifications. Therefore, the protester argues, it should have been awarded the contract for the beds under the canceled solicitation as the low responsive bidder. It states that its product has a central locking system, segmented mattress, and motors of a plug-in design. Gulf further states that although it does not use the term "retractability" since that is a "brand name" of a competitor, its bed, as required, maintains the patient's relationship with the headwall and night stand as the head end of the bed raises. Gulf concedes that the bed offered does not have a circuit tester, but argues that its bed does not require a circuit tester because it has pneumatic controls.

There is no indication in the descriptive literature submitted with Gulf's bid that the bed offered has the features of motors of a plug-in design, central locking system, or retractability.<sup>1</sup> In fact, Gulf maintains in its protest to our Office that "no manufacturer can provide literature on each and every function listed on the competitive specifications," thus apparently admitting that its descriptive literature did not address each of the required characteristics. Gulf's assertion that its product in fact complies with these specifications does not cure the failure of its literature to establish that the product actually does have these characteristics. Data-Chron, Inc., B-196801, July 29, 1980, 80-2 CPD 78. It was Gulf's responsibility to establish by means of descriptive literature furnished with its bid that the

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<sup>1</sup>Gulf as much as admits that its product does not have the retractability feature since it protested to the agency, with regard to IFB -0130, and to our Office, with regard to IFB -0027, that only one firm, Hill-Rom, can meet this specification.

offered product will meet the salient characteristics, and since the descriptive literature furnished with its bid did not clearly indicate total compliance with the IFB, it was reasonable for the contracting activity to conclude that the bid was deficient and to reject it as nonresponsive. See Potomac Industrial Trucks, Inc., B-203119, February 3, 1982, 82-1 CPD 78.

As to whether Gulf offered a bid equipped with a segmented mattress, the mattress catalog submitted with Gulf's bid indicates that one model does have such a feature. However, this model is only identified in the catalog as the "Beautyrest" mattress--no specific model numbers are listed in the catalog. Since the model number included in Gulf's bid identifying the type of mattress to be provided does not also appear in the mattress catalog, it was impossible for the agency to determine whether Gulf was offering the "Beautyrest" mattress or one of the other types illustrated which does not have the segmented characteristic. Consequently, the bid was nonresponsive on this basis also. Amray, Inc., B-205037, February 9, 1982, 82-1 CPD 116.

Finally, Gulf objects to the rejection of its bid for its failure to indicate that its bed will have an "electric circuit tester to monitor and provide alarm for any ground or polarity deficiencies." Gulf alleges that its bed does not require an electric circuit tester because it has pneumatic controls. Gulf therefore argues that it was improper for the Army to have rejected its bid for failing to offer a feature which its particular design makes unnecessary.

The solicitation specifications clearly required the beds to be equipped with electric circuit testers; it is also clear that Gulf knew in advance of bidding that its bed lacked this feature. Under these circumstances it was incumbent upon Gulf to make known any objections it had to this specification requirement prior to bid opening. At that time the Army could have considered Gulf's contention that a circuit tester was not required at least in Gulf's design and could have revised the specifications to make allowance for that fact if it agreed with Gulf's position. Instead, Gulf bid to a specification it knew it did not meet and complained only after it was advised that its bid was determined to be nonresponsive, in part, because of its failure to offer a bed equipped with a circuit tester.

To the extent that Gulf is objecting to the Army's requirement that the bed have a circuit tester, its protest is untimely because it was not filed prior to bid opening. 4 C.F.R. § 21.2(b)(1). Since the bed offered by Gulf admittedly is not equipped with a circuit tester, its bid properly was determined nonresponsive to this requirement.

Gulf's bid therefore properly was rejected as nonresponsive. No one has challenged the Army's determination that all other bids received also were nonresponsive.

We believe the Army's cancellation of the solicitation was proper because it received no bid which was completely responsive to the features it required in the hospital beds it was buying. In retrospect it may be, as the Army states, that this occurred because of inartful drafting of the solicitation, which did not explicitly indicate that the descriptive literature had to show the bidder's product satisfied each salient characteristic. It may also be that bidders were not as careful as they should have been in the preparation of their bids and failed to check their descriptive literature for completeness against the list of required characteristics contained in the IFB, or it may be that one or more bidders could not have submitted descriptive literature fully satisfying the IFB requirements because the product they manufactured did not meet all the salient characteristics. In any event, when the Army compared the bids received with the list of features it required, none of the bids fully demonstrated that the product being offered met those requirements. Under these circumstances, we believe the Army acted reasonably in canceling IFB -0130 and resoliciting its requirements with more detailed and explicit instructions concerning the descriptive literature required.

#### IFB -0027

After canceling IFB -0130, the Army resolicited for the same requirements under IFB -0027, which included essentially the same salient characteristics for the hospital beds.<sup>2</sup> Gulf filed this protest with our Office

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<sup>2</sup>IFB -0027, unlike IFB -0130, did not include a circuit tester as a salient characteristic of the hospital beds.

prior to bid opening, contending that the requirement of "retractability" is unduly restrictive of competition. It contends that this requirement has no clinical or therapeutic benefit to either the patient or hospital and that Hill-Rom is the only manufacturer which can meet this requirement.

Gulf's bid under the solicitation was rejected as nonresponsive because, as under IFB -0130, its descriptive literature failed to indicate compliance with a number of the salient characteristics: retractability, central locking system, segmented mattress, and motors of a plug-in design. The Army states that all of the other bids received in response to this IFB were also determined to be nonresponsive and consequently this solicitation, too, was canceled.

We find it unnecessary to resolve the issue of restrictiveness of the requirement for retractability. Where the reason for cancellation is the nonresponsiveness of all bids and a protest addresses one of the specifications, the protest may be considered if the specification forming the basis of the protest was the sole reason for the rejection of the protester's bid. However, this is not the case here. Gulf is challenging only the retractability requirement, but its bid was determined to be nonresponsive on the basis of several other grounds in addition to retractability and it has not challenged the propriety of those grounds. Thus, even assuming that the retractability requirement is unduly restrictive, Gulf would not be entitled to award because the agency still has proper grounds for the rejection of Gulf's bid. Thus, the protest is academic and need not be considered. See Canadian General Electric Company, Ltd., B-198261, May 19, 1980, 80-1 CPD 345. We further note that the solicitation underlying the protest was canceled and the protester has not objected to the cancellation.

The protest is denied as to IFB -0130 and dismissed as to IFB -0027.

*Harry R. Dan Clave*  
for Comptroller General  
of the United States